

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FRANK BILELLO, individually and on behalf )	<u>Via ECF</u>
of all others similarly situated, )	
Plaintiff, )	Civ. No. 07-CV-7379 (RJS) (FM)
v. )	PLANTIFF'S NOTICE OF FURTHER
JPMORGAN CHASE RETIREMENT PLAN, )	SUPPLEMENTAL AUTHORITY IN
JPMORGAN CHASE DIRECTOR OF )	OPPOSITION TO DEFENDANTS'
HUMAN RESOURCES as administrator of the )	MOTION TO DISMISS
JPMorgan Chase Retirement Plan, )	
Defendants. )	
_____ )	

In further support of his opposition to the Defendants' Motion to Dismiss, Plaintiff Frank Bilello respectfully submits the recently issued letter from the U.S. Department of the Treasury, clarifying that the Internal Revenue Service's Revenue Ruling 2008-7 applies only to the tax qualification status of ERISA plans and not to private litigation such as the present case. May 28, 2008 letter from U.S. Department of the Treasury Assistant Secretary for Legislative Affairs Kevin I. Fromer to Senator Tom Harkin ("Treasury Letter"), attached hereto as Exhibit 1.

Defendants have argued that Revenue Ruling 2008-7 explicitly exculpates them of backloading, despite the fact that their Plans entailed periods of zero benefit accrual for participants. *See* Mem. of Law in Supp. of Defendants' Motion to Dismiss the First Amended Class Action Complaint at 10-11. (Dkt. No. 26.) However, the attached Treasury letter affirms

that “there was no intent by the Treasury Department nor the IRS to take sides in any ongoing private litigation. The transition relief provided in Revenue Ruling 2008-7 applies solely for purposes of the Internal Revenue Code tax qualification rules, and not for purposes of litigation under Title I of the Employment Retirement Income Security Act of 1974 (ERISA).”

In light of this supplemental authority, and the reasons stated in Plaintiff’s Opposition to Defendants’ Motion to Dismiss, Plaintiff respectfully requests that the Court deny Defendants’ Motion to Dismiss.

Respectfully submitted this 10th day of June, 2008.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

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s/ Amy Williams-Derry

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